

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 February 2024

**Public Authority:** The Department for Levelling Up, Housing and Communities

**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of correspondence and communications held by the Department for Levelling Up, Housing and Communities (DLUHC) which were sent between HRH The Prince of Wales (or officials acting on his behalf), and the Secretary of State, about homelessness, housing and the Homewards initiative.
2. The DLUHC withheld the information identified as being relevant to the request under section 37(1)(aa)(communications with the heir to the throne) and section 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the DLUHC was correct to have determined that the information held that is relevant to the request is not environmental information, and should be considered under FOIA. Furthermore, the Commissioner finds that the DLUHC is entitled to rely on section 37(1)(aa) of FOIA as its basis for withholding this information.
4. The Commissioner does not require the DLUHC to take any steps as a result of this decision notice.

## Request and response

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5. On 13 July 2023, the complainant submitted a request for information to the DLUHC, advising that they required any information generated between 1 February 2023 and 13 July 2023, which was relevant to the following points:

"1...During the aforementioned period has Prince William (and or anyone able to correspond and communicate on his behalf) written to and or communicated with the Secretary of State. Please note that I am only interested in that correspondence and communications which mentions and or in any way relates to any and or all of the issues and topics listed below. If the answer is yes, can you, please provide copies of this correspondence and communication.

(a)..... Homelessness and or a shortage of homes anywhere in the UK.

(b).....The problems faced by rough sleepers in parts of the UK. This will include but will not be limited to the health and safety of those individuals who are sleeping rough and who have no proper protection from the elements.

(c)..... The Prince's new Homewards initiative.

(d) .....The Royal Foundation of the Prince and Princess of Wales.

(e).....The shortage of housing in the UK or in particular parts of the UK.

(f)..... The need to build and or to secure and or to provide more homes in the UK as a whole and or in particular parts of the UK.

(g).....The use of vacant land sites in the UK to provide new homes and or new facilities for those regarded as being homeless.

(h).....The need to build more housing and or facilities for the homeless on either brown field or green field sites within the UK.

(i).....The use of existing properties that are either empty or derelict to provide new homes and or new services for the homeless.

2....During the aforementioned period has the Secretary of State written to and or communicated with Prince William (and or anybody able to correspond and or communicate on his behalf) about any of the issues outlined in question one (a to i). If the answer is yes, can you, please provide copies of this correspondence and communication.

3....During the aforementioned period did either the Royal Foundation of the Prince and Princess of Wales and or any employee and representative of the Prince's Homewards initiative write to and or communicate with the Secretary of State. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to and or all of the topics and issues listed in question 1 (a to i). If the answer if yes, can you, please provide a copy of this correspondence and communication.

4.....During the aforementioned period did the Secretary of State write to and or communicate with the Royal Foundation of the Prince and Princess of Wales and or any employee and or representative of the prince's Homewards initiative. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and all the topics and issues listed I question one (a to i). If the answer is yes, can you, please provide a copy of this correspondence and communication."

6. On 11 August 2023, DLUHC issued a refusal notice in response to the request, citing section 37(1)(aa) and section 40(2) of FOIA.
7. On 14 September 2023, the complainant requested an internal review. They advised the DLUHC that they considered at least some of the requested information to fall within the scope of the Environmental Information Regulations 2004 (EIR), and that therefore, the FOIA exemptions cited by the DLUHC could not be relied upon in respect of all of the withheld information.
8. Following an internal review, the DLUHC confirmed that it had considered the information that was held that was relevant to the request and it was satisfied that it was not environmental information.
9. The DLUHC went on to confirm that as the information that was held relates to communications with, or on behalf of, HRH The Prince of Wales, it was correct to have refused the request under section 37(1)(aa) of FOIA. DLUHC went on to confirm that it also considered part of the information "in scope" to be personal information, and that such information was also exempt from disclosure under section 40(2) of FOIA.

## Scope of the case

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10. The complainant has raised concerns with the Commissioner about the decision made by the DLUHC to consider the request in its entirety under FOIA. The complainant believes that at least some of the information held that is relevant to the request is environmental information and therefore subject to the EIR. They say that this is an important factor to consider as there is not an equivalent to section 37(1)(aa) within the EIR.
11. The complainant also has said that they do not accept that disclosure of the requested information would breach any individual's data protection rights, and therefore, the DLUHC is not entitled to rely on section 40(2) of FOIA, or any equivalent that it may consider to be applicable under the EIR.
12. The Commissioner will consider whether the information that is held that is relevant to the request is environmental. Once this has been determined, if it is the case that FOIA is found to be the appropriate information access regime, the Commissioner will then decide whether the DLUHC is entitled to rely on section 37(1)(aa) and, if necessary, section 40(2), as its basis for withholding such information.

## Reasons for decision

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### Information held by the DLUHC

13. The withheld information provided by the DLUHC for the Commissioner's consideration is very limited in content, consisting of only two emails. Given this, the Commissioner asked the DLUHC to provide further details about the searches that were carried out in order to locate all of the information held that is relevant to the request.
14. The DLUHC has confirmed that information relevant to the request would be held within very specific parts of the Department. It has said that it has conducted a full search of the relevant systems where such information would be held, and has also spoken to the relevant members of staff who would have knowledge of such information, if it existed. The DLUHC has confirmed that these checks and searches did not identify any further information that would fall within the terms of the complainant's request.
15. The Commissioner is satisfied on the basis of the statement made by the DLUHC that the location of information relevant to the request, if held, would be restricted to the areas of the Department described to him.

16. The Commissioner considers that the searches conducted by the DLUHC are reasonable, appropriate, and adequate and would have identified any information held that is relevant to the request.
17. On this basis, the Commissioner therefore concludes that, on the balance of probabilities, the information provided for his consideration is the only information held by the DLUHC that falls within the scope of the complainant's request.

**Is the withheld information environmental?**

18. Regulation 2(1) defines environmental information as follows:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on —

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

19. The Commissioner's [guidance](#) states that the term "any information" set out in regulation 2(1) should be interpreted broadly when considering whether information is environmental information.
20. However, whilst accepting that parts of the requested information, if held, has the potential to fall under the definition of environmental information as claimed by the complainant, having considered the content of the information that has been identified by the DLUHC as being relevant to the request, the Commissioner is satisfied that it is too far removed from activities which would affect, or be likely to affect, the elements or factors and measures referred to in regulations 2(1)(a), 2(1)(b) or 2(1)(c).
21. The Commissioner is therefore satisfied that the withheld information does not fall within the definition of environmental information as set out in regulation 2(1)(a)-(f) of the EIR, and that the DLUHC was correct to consider such information under FOIA.

**Section 37(1)(aa) – Communications with the heir to the throne**

22. Section 37(1)(aa) exempts information relating to communications with the heir and second in line to the Throne.
23. Section 37(1)(aa) is a class-based and absolute exemption. This means that if the information in question falls within the class of information described in the exemption in question (in this case information relating to communications with the heir to the Throne), it is exempt from disclosure under FOIA. It is not subject to a balance of the public interest test.
24. Communications with the heir are not necessarily made directly by, or to, HRH The Prince of Wales. The exemption will also include communications made or received on his behalf by his officials.
25. For the exemption under section 37(1)(aa) to be engaged the information must constitute, or relate to, a "communication". So, for example, an internal note held by a government department that simply references the heir will not fall within this definition unless it specifically relates to a relevant communication.
26. Having viewed the withheld information, the Commissioner is satisfied that it forms communications made, or received by, officials on behalf of HRH The Prince of Wales about matters that fall within the terms of the complainant's request. Therefore, he considers that the exemption at section 37(1)(aa) has been correctly engaged.

27. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner therefore finds that the information is exempt by virtue of section 37(1)(aa).
28. As the exemption at section 37(1)(aa) is absolute, there is no further consideration to be made, and no public interest to consider.
29. For the above reasons, the Commissioner has not gone on to look at section 40(2) which was also cited by the DLUHC in relation to the withheld information.

## Right of appeal

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30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Suzanne McKay**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**